

FILED

May 16 2007

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

STATE OF MONTANA,

Plaintiff,

v.

JAMES PATRICK,

Defendant.

PRO 6-0120

ORDER

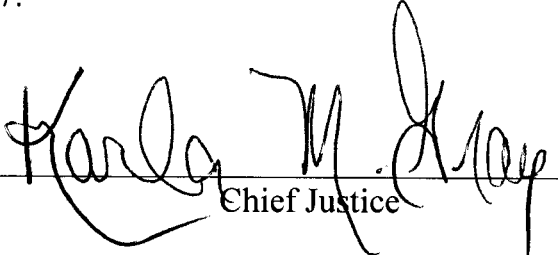
A motion for disqualification having been filed in Yellowstone County Cause No. DC-05-438,

IT IS ORDERED:

1. Pursuant to § 3-1-805, MCA, the Honorable Joe L. Hegel, District Judge of the Sixteenth Judicial District, Rosebud County, is hereby assigned to hear the disqualification proceeding.

2. The Clerk is directed to mail a true copy of this order to the Honorable Susan P. Watters, the Honorable Joe L. Hegel and the Clerk of the District Court of Yellowstone County, Montana, for notification to James Patrick, personally, and counsel of record in Yellowstone County Cause No. DC-05-438.

DATED this 16th day of May, 2007.


Chief Justice

FILED

MAY 16 2007

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

CLERK OF THE
DISTRICT COURT
LAURA A. BRENT

2007 MAY 2 PM 4 56

FILED

BY _____
DEPUTY

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

JAMES PATRICK,

Defendant.

Cause No.: DC 05-438

Judge Susan P. Watters

**ORDER OF REFERRAL TO
MONTANA SUPREME COURT
AND ORDER TO FILE
AFFIDAVIT UNDER SEAL**

On May 2, 2007, Defendant, James Archie Patrick III, filed a motion to disqualify Judge Susan P. Watters and an affidavit in support thereof. This Court has reviewed said affidavit and Mont. Code Ann. § 3-1-805. This Court shall proceed no further with this cause.

IT IS HEREBY ORDERED that this matter shall be referred to the Montana Supreme Court for further action regarding disqualification of Judge Watters in this case.

IT IS FURTHER ORDERED that Defendant's affidavit shall be filed under seal.

DATED this 2nd day of May 2007.

DISTRICT JUDGE

cc: Montana Supreme Court Chief Justice Karla M. Gray
Yellowstone County Attorney
Raymond G. Kuntz, III
State Public Defender
James Patrick
c/o Yellowstone County Detention Facility
3165 King Avenue East
Billings MT 59101-5529

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail/hand upon the parties and their attorneys of record at their last known addresses this 22 day of May 2007.

BY Gabriel E. Epling
Judicial Assistant to Hon. Susan P. Watters

James Patrick
YCDF
3165 King Ave. East
Billings, MT 59101

CLERK OF THE
DISTRICT COURT
LAURA A. BRENT

2007 MAY 2 PM 4 13

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

FILED

BY

DEPUTY

STATE OF MONTANA)
)
Plaintiff,)
v.)
)
JAMES PATRICK,)
)
Defendant.)

No. DC 05-438

Judge Susan P. Watters

MCA 3-1-805 Certification

COMES NOW the Defendant, James Patrick, *pro se*, and files this certification, as
per MCA 3-1-805.

As I am acting on my own behalf, and have filed a notice of *pro se* appearance
and requested the Clerk of Court to note that I am now counsel of record, I make the
following certification:

The affidavit and motion to disqualify Judge Watters for cause, pursuant to MCA
3-1-805, are made and filed in good faith, not for the purposes of delay, after careful
consideration, and in the interests of justice.

This 1 day of MAY


James Patrick

STATE OF MONTANA)
COUNTY OF YELLOWSTONE)
_____)

PERSONALLY APPEARED before me the undersigned, who, being duly sworn, stated as follows:

1. My name is James Patrick. I am 43. I currently reside at the Yellowstone County Detention Facility, where I have been continuously since my arrest on April 29, 2005.
2. I am charged with four felonies and one misdemeanor, none of which have been resolved at this time.
3. The Hon. Susan Watters, District Court Judge, has been the judge assigned to my criminal case since May 25, 2005. The case number is DC-05-438.
4. Maria Martin (hereinafter "Complainant" or "Petitioner") is the complaining (and chief) witness against me. There being no other person present at the time the events complained of allegedly occurred, the case, at heart, consists of her allegations versus my denials.

Involvement In Other Cases

Divorce

5. Upon information and belief, Judge Watters, at the time she accepted assignment of this case, was still and for some time had been presiding over a divorce proceeding against Ms. Martin's spouse, in which Ms. Martin was the Petitioner. Judge Watters' involvement in the divorce and criminal cases overlapped for a period believed to exceed six months (the dates are a matter of record in Yellowstone County).

divorce

First Order of Protection

6. In October, 2005, I was under a "no contact order" with Complainant; incarcerated pretrial with a bail of \$100,000.00 which I was unable to meet; and under an additional Temporary Order of Protection as to the Complainant and her family (which Order would soon expire), which had been entered in Justice Court.
7. Complainant moved for a Temporary Order of Protection on October 12, 2005 (DR 05-1108). Instead of returning to Justice Court, she filed in District Court, listing County Attorney Rod Souza as being her attorney.
8. Judge Watters became the judge assigned to that new and separate suit. Judge Watters neither recused herself from the civil case, nor postponed disposition until resolution of my criminal charges, although the two cases conflicted and each involved fundamental rights.
9. The new petition for a Temporary Order of Protection, like the former one issued in Justice Court, relied upon and used as its basis the events complained of in the criminal case (which are denied).
10. The new petition also included a narrative invective attacking my character, stating opinion, making unsubstantiated accusations and speculations, and stating, as if fact, a new and untrue allegation. On information and belief,

TR0

such narrative was intended to and likely would have had significant prejudicial effect upon any reader.

11. Petitioner also checked the box indicating that she believed she was in imminent danger of immediate harm unless an immediate (*ex parte*) Order issued.
12. Judge Watters, acting without notice or hearing, made a finding that "Petitioner is in danger of harm," and issued an *ex parte* order, "because harm may result to the Petitioner if the Order of Protection is not issued immediately." At that time, I was incarcerated pretrial, currently subject to an Order of Protection (which had not expired) and a "no contact" order.
13. Other than court proceedings, I have had no contact (direct, indirect, or third-party), with Complainant since the filing of an *ex parte* Temporary Restraining Order (or its equivalent) against me in April, 2005. This applies to the entirety of the incidents described herein, and remains true today.
14. There are not, nor have there ever been, charges or allegations that I have sought to have another person harm Complainant while I was incarcerated, threatened, written or called her while incarcerated, nor that I have the means or inclination to do so, nor is stalking alleged. Other than the criminal allegations and the protective orders mentioned herein, there are no other domestic or criminal complaints between the parties.
15. Petitioner did report to the State, during my incarceration, a hearsay report that I had told a visitor that I still loved her and that he was asked to pass that message (only) along to her. On information and belief, that was the basis for Petitioner's accusation in the Petition for a Temporary Protective Order that I had tried to contact her while incarcerated. While I did tell my visitor that, despite the criminal and other allegations, I still felt love for Petitioner, and did not have bad feelings toward her, I did not ask or suspect that he would pass that message along to her. I had had several conversations with this mutual acquaintance since my arrest, reminding and instructing him that he should not repeat anything I said to him to Petitioner, and had repeatedly asked him not to communicate with her at all. I asked him during that visit not to repeat to Complainant anything I said. (Obviously, he did not abide by my wishes). No new charge issued from this hearsay report that I had said I still felt love for Complainant.
16. My retained criminal lawyer at the time (since discharged) refused to represent me regarding the Petition. Faced with a hearing which would cover the same allegations as my criminal case, before the judge who presided over my criminal case, and without benefit of counsel, I consented to a temporary order to prevent irreparably prejudicing my criminal defense.
17. On information and belief, Judge Watters was then presiding over Complainant's divorce, Petition for Order of Protection, and the criminal charges against me, all of which cases were initiated by Ms. Martin and two of which concerned me. Affiant is unable to verify at this time the date of Ms. Martin's divorce; affiant believes it occurred either during the fall of 2005, or not even until 2006. The actual date is a matter of record in Yellowstone County.

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Second Order of Protection

18. A year later, I remained incarcerated. As the expiration date for the temporary order approached, Complainant sought a Permanent Order of Protection. Judge Watters again handled that petition.
19. Judge Watters set a hearing date. However, shortly thereafter, she issued an order changing the hearing date, at the request of Petitioner. Neither my attorney nor I received a copy or notice of such request, or consultation regarding a changed hearing date. On information and belief, Judge Watters changed the hearing date without consultation due to *ex parte* communication from Petitioner.
20. At this time, I am unable to locate this new petition (for reference), and so do not know what it alleged, although I knew of no new allegations. It is unknown to me what other *ex parte* communication may have occurred between Judge Watters and Complainant. *ex parte*
21. By this time, I was represented by appointed counsel (my retained counsel, who had been paid by one of my relatives, kept the entire retainer and expense advance when discharged).
22. This appointed counsel quickly obtained a hold on the new hearing, pending resolution of the criminal charges, to prevent "pre-trial" and prejudice of my criminal case, or waiver of fundamental rights while under duress.

The Bond Reduction Motion

23. My initial counsel had filed a motion on September 16, 2005, for bond reduction and a special setting for the same.
24. After original counsel was replaced by my (only) retained counsel, I pressed new counsel to pursue a hearing on said motion(s).
25. The next time I met with him, he informed me that he had discussed the topic with Judge Watters, who, he said, told him that if we had a hearing, she would raise my bond. *counsel says she'll raise bond*
26. At that time, no witnesses, evidence, statements, or the like had been presented on my behalf as to the bond reduction, other than the initial briefing.
27. At that time, I abandoned any hope of a fair hearing on the bond reduction motion, the same has never been held, and I remain incarcerated pretrial.

Two Hearings

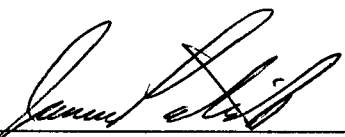
28. A motion for suppression of evidence, also originally filed on September 16, 2005, was finally held on October 17, 2006.
29. At the conclusion of that hearing, Judge Watters "suggested" to my counsel that he dismiss all outstanding motions, including bond reduction, with leave to re-file later. To my great displeasure, he consented to this "suggestion."
30. On November 30, 2006, the same counsel filed a motion to withdraw, citing a breakdown of the attorney/client relationship.
31. That motion came at my insistence; the breakdown in the relationship consisted primarily of this counsel's failure to meet the minimum standards due from an attorney, allowing evidence to be lost, and a near-complete failure to prepare for trial or otherwise defend me.

32. Judge Watters conducted a hearing on that motion. At the hearing, she chastised me for my attorney's withdrawal. Blaming me, she chastised me because, she said, she had convinced someone who does not ordinarily take appointed cases to represent me. To my best recollection, she did not make inquiry into my satisfaction, or reasons for dissatisfaction, with said counsel. She informed me she would appoint no further counsel for me, and I would have to proceed *pro se* if the new counsel did not work out (regardless of the reason).
33. My prior two attorneys had both been dismissed for failure to perform, of which Judge Watters had been made aware.
34. To the best of my knowledge, Judge Watters has never counseled, directed, warned, chastised, or urged any of my defense counsel, or the State, to move this case along, or (as to my counsel) to ensure that the indolence of prior counsel was speedily addressed and corrected, in an attempt to ensure a fair trial.

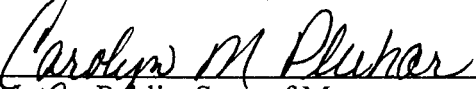

Imminent Motions

35. Defendant intends to file motions to dismiss, based upon violations of his speedy trial rights, inability to receive a fair trial, and other grounds.
36. Among the reasons argued for such motion will be Judge Watters' failing to hear outstanding motions for more than a full calendar year; her urging the dismissal of the remaining motions; and other acts and omissions of hers which contributed to the delay and attribute such delay to actions of the State.
37. On information and belief, Judge Watters cannot decide such motions, as her acts and omissions will be an integral part of the basis stated for relief, and her ruling on such motion would constitute a clear conflict of interest and appearance of impropriety.
38. On information and belief, the above facts show bias or prejudice, as well as conflicts of interest and duty and the appearance of impropriety and partiality.
39. This affidavit is made in good faith and is accompanied by a motion and certification of good faith, as per MCA 3-1-805.
40. The foregoing statements are true as of my own personal knowledge, except those stated on information and belief, and I believe them to be true.

This 1 day of May, 2007


James Patrick

SWORN TO and subscribed before me this 1 day of May, 2007.

 Residing at Billings, Montana
Notary Public, State of Montana

My Commission Expires: August 29, 2008

[SEAL]

James Patrick
YCDF
3165 King Ave. East
Billings, MT 59101

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

CLERK OF THE
DISTRICT COURT
LAURA A. BRENT

2007 MAY 2 PM 4 13

STATE OF MONTANA)
)
Plaintiff,)
v.)
)
JAMES PATRICK,)
)
Defendant.)
)

No. DC 05-438

FILED

BY _____
DEPUTY

Judge Susan P. Watters

**Defendant's Motion and Memorandum
To Disqualify the Judge or, in the
Alternative, for Recusal or Withdrawal**

COMES NOW the Defendant, James Patrick, *pro se*, and moves for disqualification of the District Judge for cause, pursuant to MCA 3-1-805, or, in the alternative, for recusal/withdrawal of the judge due to conflict of interest, apparent conflict of interest, appearance of prejudice and bias, and appearance of impropriety.

This motion is accompanied by an affidavit and certificate, both of which are incorporated herein by reference.

In further support of this motion, Defendant would show the following:

1. Judge Watters is far too involved with Complainant, Ms. Martin. At the same time she has sat on this criminal case, she has also sat on a divorce and two protective order petitions, all brought by Complainant (two concerning me), and all, being domestic in nature, crafted to evoke sympathy for Complainant with resulting bias and prejudice against those she accuses, including me.

2. Judge Watters, Defendant contents, made a clearly erroneous finding and entered an *ex parte* order in derogation of my fundamental rights, in DR 05-1108. It was impossible, on October 17, 2005, while I was incarcerated and unable to make bail, under an order of protection and a “no contact” order, and furthermore, unaware even of Petitioner’s telephone numbers, for me to be an immediate “danger” to her. Defendant believes such a finding and order alone constitute confirmation of prejudice or bias on Judge Watters’ part.
3. Judge Watters, in the two petitions for a protective order, has been exposed to *ex parte* assertions by the Complainant, without cross-examination, at least one of which included hearsay, opinion, speculation, and attacks upon my character, and which concern, in part, conduct alleged to have occurred well after the alleged criminal conduct, and which would be inadmissible at trial. The judge not only read such assertions, she made a finding of fact based on them and issued an *ex parte* order. Judge Watters is therefore not qualified, as a potential finder of fact or as a judge, in this matter (including pretrial proceedings).
4. Despite being aware that my first two counsel were discharged for cause (failure to perform), and despite the fact this case has dragged out beyond two years, Judge Watters has not, to Defendant’s knowledge, urged timeliness or thoroughness by appointed counsel in investigating, resolving motions, resolving the charges, or otherwise indicated an interest in my obtaining a fair and speedy trial.

5. Defendant contends that Judge Watters indicated bias during two hearings. At the first, she urged defense counsel to dismiss motions she had allowed to languish for more than a year. At the second, she indicated clear bias and actual anger in chastising me for my attorney's deficient conduct, and threatened to make me proceed *pro se* should I lose the new counsel, regardless of the reason.
6. Perhaps most disturbing is the report of Mr. Watson, my then-counsel, that Judge Watters had told him, prior to evidence, testimony, or a hearing, that she had already made up her mind to raise my bond if she held a hearing on my motion to reduce bond.
7. Judge Watters' repeated and continual *ex parte* contact with Complainant, with favorable action taken on Complainant's part without notice to Defendant, creates a clear stamp of impropriety and partiality.
8. Pretrial, dispositive motions concerning Defendant's Constitutional rights are about to be filed. Such requests for relief are based, in part, on Judge Watters' conduct to date in this case. This conflict of interest would preclude her ruling on such motions.
9. The collective facts in the affidavit and above arguments all tend to create an appearance of impropriety and bias strong enough to preclude Judge Watters' presiding over this case.
10. As a further consideration, Defendant states that he has urged counsel since 2005 to seek Judge Watters' recusal or disqualification, which counsel has neglected to do; that Defendant clearly understood that Mr. Lansing was going

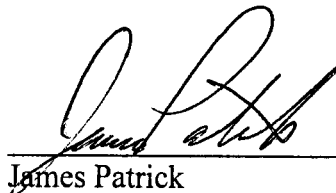
to move to disqualify in 2006, and his subsequent failure to so do was a final prompt of his withdrawal; and that, rather than waiting until the last moment, as it may appear, Defendant has instead discharged his counsel and filed for disqualification himself.

WHEREFORE, Defendant respectfully prays for the following relief:

- A. Disqualify Judge Watters from presiding over this case, and appoint another District Judge (other than those who were substituted or conflicted off the case at its outset);
- B. In the alternative, that the case be reassigned due to the appearance of impropriety and partiality;
- C. Also in the alternative, that Judge Watters recuse herself or withdraw for any or all of the foregoing reasons; and
- D. Also in the alternative, should Judge Watters continue to preside over this case, that she not rule on motions, about to be filed, that include her conduct as a reason for Defendant's relief.

Defendant prays the Court to grant these requests, as well as such other and further relief in his favor as may be just and equitable.

This 1 day of May, 2007.



James Patrick

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy (duplicate original) of Defendant's Affidavit, Motion and Memorandum to Disqualify the Judge, and Certification of Good Faith were served on opposing counsel by depositing the same, with sufficient postage, into the U.S. Mail (turning it over to the guard to be mailed) on MAY 1, 2007, 2007, addressed as follows:

Mr. Rod Souza
Yellowstone Co. Attorney
P.O. Box 35025
Billings, MT 59107

A handwritten signature in black ink, appearing to read "James P. Stephens", is written over a horizontal line.

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

JAMES PATRICK,

Defendant.

Cause No.: DC 05-438

Judge Susan P. Watters

**ORDER OF REFERRAL TO
MONTANA SUPREME COURT
AND ORDER TO FILE
AFFIDAVIT UNDER SEAL**


On May 2, 2007, Defendant, James Archie Patrick III, filed a motion to disqualify Judge Susan P. Watters and an affidavit in support thereof. This Court has reviewed said affidavit and Mont. Code Ann. § 3-1-805. This Court shall proceed no further with this cause.

IT IS HEREBY ORDERED that this matter shall be referred to the Montana Supreme Court for further action regarding disqualification of Judge Watters in this case.

IT IS FURTHER ORDERED that Defendant's affidavit shall be filed under seal.

DATED this 2nd day of May 2007.

2007.


DISTRICT JUDGE

cc: Montana Supreme Court Chief Justice Karla M. Gray
Yellowstone County Attorney
Raymond G. Kuntz, III
State Public Defender
James Patrick
c/o Yellowstone County Detention Facility
3165 King Avenue East
Billings MT 59101-5529

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail/hand upon the parties and their attorneys of record at their last known addresses this 2nd day of May 2007.

BY Robert L. Shilling
Judicial Assistant to Hon. Susan P. Watters